STATE OF MICHIGAN

COURT OF APPEALS

ELLEN M. JACOB and JAMES E. FULLER, as Trustees of the LIQUID ASSET MARITAL TRUST, Plaintiffs-Appellees,	UNPUBLISHED February 24, 2011
v	No. 291224 Oakland Circuit Court
BALD MOUNTAIN WEST, a Michigan Partnership, and STEVEN E. JACOB, Defendants-Appellants.	LC No. 2007-085876-CZ

Before: SAAD, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendants appeal the trial court's rulings that granted plaintiffs an accounting of the Bald Mountain West partnership, ordered dissolution of the partnership, and appointed a receiver to facilitate the dissolution. For the reasons set forth below, we affirm.

I. ACCOUNTING

Defendants contend that the trial court erred in its findings of fact and conclusions of law regarding an accounting of the partnership. An accounting of a partnership is an equitable action, *Mousseau v Walker*, 356 Mich 373, 375, 379; 97 NW2d 110 (1959), which is subject to de novo review, *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 40; 700 NW2d 364 (2005). "A trial court's factual findings are reviewed for clear error and its conclusions of law are reviewed de novo." *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

A partner has the right to a formal accounting of partnership affairs "[i]f he is wrongfully excluded from the partnership business or possession of its property by his copartners," "[i]f the right exists under the terms of any agreement," or "[w]henever other circumstances render it just and reasonable." MCL 449.22. Further, "[e]very partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property." MCL 449.21(1).

Evidence showed that Steven and Jamie Jacob modified the partnership agreement without the approval of all of the partners by designating Steven a managing partner with certain express authority, and assigning him annual compensation of $50,000. This violated the partnership agreement, as well as MCL 449.18(e) ("All partners have equal rights in the management and conduct of the partnership business."), and MCL 449.18(f) ("A partner is not entitled to remuneration for acting in the partnership business."). The partnership agreement "contain[ed] the entire understanding among the Parties and shall not be modified except in writing by all of the Parties hereto." Moreover, "an act in contravention of any agreement between the partners may not be done rightfully without the consent of all the partners." MCL 449.18(h). Additionally, Steven was not entitled to compensation as a partner, absent express terms in the partnership agreement. *Band v Livonia Assoc*, 176 Mich App 95, 117; 439 NW2d 285 (1989). The trial court correctly ruled that Steven and Jamie excluded plaintiffs from participating in the partnership, because Steven made no real effort to accommodate the request by the plaintiff trustees Ellen Jacob and James Fuller to change the partnership meeting date, held the partnership meeting without all of the members, addressed matters not contained in the partnership meeting notice, and modified the partnership agreement without all of the partners present.

We also hold that the trial court correctly ruled that Steven began taking a $50,000 annual management fee in 2004 without plaintiffs' knowledge. Fuller testified that he only discovered the management fee after he reviewed the partnership's books after this case was filed in 2007. Defendants assert that the management fee would be included in the partnership tax forms, which Fuller admittedly received. However, the partnership tax forms were not admitted below and not attached to defendants' appellate brief or reply. Thus, there is no documentary evidence to show whether the management fee was included on those forms. As appellants, defendants bear the burden of furnishing this Court with a record to verify the factual basis of their argument for reversal. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993).

The record also shows that Steven withheld information from plaintiffs regarding partnership affairs, including the trespass action, the condemnation action, the environmental cleanup costs, the demolition of the garage, and the issuance of promissory notes. See MCL 449.20 ("Partners shall render on demand true and full information of all things affecting the partnership to any partner . . . ."). See also *Penner v De Nike*, 288 Mich 488, 490; 285 NW 33 (1939) (partners are accountable among themselves as fiduciaries, and it is the duty of each partner to render true and full information to the other partners under all circumstances). It is undisputed that Steven did not communicate with Ellen and Fuller after their failure to attend the June 7, 2004 partnership meeting. At trial, Steven admitted that he did not inform plaintiffs about the trespass action, condemnation action, the demolition of the garage, the environmental issues related to the partnership's real property, and the promissory notes between the partnership and his other business entity. "Each partner has the right to know all that the others know, and each is required to make full disclosure of all material facts within his knowledge in any way relating to the partnership affairs." *Band*, 176 Mich App at 113-114. Such conduct amounted to a violation of MCL 449.20, and also excluded plaintiffs from participating in the partnership because they were denied their "equal voice in the determination of the policies of the Partnership and the management thereof." MCL 449.20 "has been broadly interpreted as imposing a duty to disclose all known information that is significant and material to the affairs or

property of the partnership." *Id.* at 113; *Jaffa v Shacket*, 114 Mich App 626, 640; 319 NW2d 604 (1982). Moreover, such conduct contravenes MCL 449.21(1), which provides that "[e]very partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property." Although the trial court did not expressly rely on MCL 449.20 or MCL 449.21, it, nonetheless, correctly concluded that Steven violated MCL 449.18(e) and the partnership agreement by improperly excluding plaintiffs from the management decisions discussed above.

Finally, the trial court ruled that Steven violated MCL 449.19 and the partnership agreement by failing to provide partnership records to plaintiffs. MCL 449.19 provides: "The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them." The partnership agreement permits any partner, upon request, to a complete audit of the partnership's books of account "at the end of the accounting year by the auditing firm regularly employed by the Partnership, such audit to be performed solely at the expense of the requesting Partner."

Here, it is undisputed that the partnership's books were kept at the partnership's principal place of business. At trial, Steven claimed that he was willing to meet with Ellen and Fuller at any time, and that the partnership books were always available for their review. In 2007, plaintiffs made three requests for an audit of the partnership, and a fourth request to inspect the partnership books. Fuller stated at trial that he received no information regarding the partnership from 2003 to 2008, other than tax forms or requests to pay real property taxes and other expenses. Steven did not respond to any of plaintiffs' communications.

It is undisputed that Steven never responded to plaintiffs' three requests for an audit. Steven, therefore, violated the partnership agreement. On appeal, defendants assert that the partnership books were always available and plaintiffs never availed themselves of the opportunity to review the books, which means there was no technical violation of MCL 449.19. Certainly, plaintiffs could have gone to the partnership's office with a team of accountants and conducted the audit. Nevertheless, the partnership agreement provides that any partner is entitled to an audit, so long as the requesting partner pays for it. On appeal, defendants claim that plaintiffs never offered to pay for the audit in any of their communications. This claim is somewhat circular because it suggests that defendants wanted plaintiffs to enclose payment for the audit without knowing how much the audit would cost. Ultimately, however, Steven admitted that he ignored plaintiffs' requests for an audit. Thus, the trial court correctly concluded that Steven violated the partnership agreement; however, there is no indication that he violated MCL 449.19, where Fuller never went to the partnership's office to review its books, there is no indication that Steven would have prevented Fuller from doing so, and there is no indication that the books were not available for review at its principle office.

In sum, we conclude that all of the bases for a formal accounting of the partnership were present in this case. The evidence demonstrated that Steven and Jamie excluded plaintiffs from the partnership, MCL 449.22(a), which was in contravention of MCL 449.18 (rules determining rights and duties of partners), and MCL 449.20 (duty of partners to render information). The partnership agreement affords any partner the right to request and obtain an audit, so long as the

requesting partner pays for it. MCL 449.22(b). Steven failed to account to the partnership for any benefit, i.e., proceeds for the lawsuits that were "derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property." MCL 449.21; MCL 449.22(c). Finally, though left unstated, the trial court concluded that other circumstances existed in this case to require a formal accounting. Regardless of the unstated reasons, the evidence fully supports the trial court's ruling that ordered a formal accounting of the partnership where, as here, there is a clear lack of communication and cooperation of the parties. Moreover, Steven seized the role of managing partner without the consent of all of the partners present and withheld information on a number of important matters. MCL 449.22(d). Although the trial court may have erred in finding that defendants conduct did not violate MCL 449.20 and MCL 449.21, and that their conduct did not necessarily violate MCL 449.19, we affirm the trial court's ruling that ordered an accounting of the partnership, where it ultimately reached the correct result although based partially on an incorrect rationale. *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

II. DISSOLUTION

Defendants take exception to trial court's findings of fact and conclusions of law regarding dissolution of the partnership. We review de novo a trial court's disposition on the dissolution of a partnership. *Palczyk v Muller*, 1 Mich App 708, 709, 713; 138 NW2d 514 (1965). "The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." MCL 449.29. There are no indissoluble partnerships; each partner has the right to dissolve the partnership, where such right is inseparably incident to every partnership. *Atha v Atha*, 303 Mich 611, 614; 6 NW2d 897 (1942). The dissolution of a partnership may occur by the acts of the partners, by operation of law, or by decree of the trial court. See MCL 449.31 and MCL 449.32.

The trial court essentially ruled that the partnership dissolved by the express will of plaintiffs when no definite term or particular undertaking was specified. See MCL 449.31(1)(b). And, because there is no specific term set forth in the partnership agreement, the partnership may be dissolved by the express will of any partner. *Cole v Cole*, 289 Mich 202, 205; 286 NW 212 (1939).

Both elements for dissolution were satisfied here, where plaintiffs proclaimed their intention to dissolve the partnership by filing their first amended complaint, *Atha*, 303 Mich at 613-614, 616, and they presented sufficient evidence at trial, namely, the partnership agreement, that no definite term for the partnership was specified. *Cole*, 289 Mich at 205. Although the partnership now existed for a particular purpose, there was still no definite term specified. We conclude that the trial court's factual findings were not clearly erroneous, *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007), and that dissolution was appropriate pursuant to MCL 449.31(1)(b), *Cole*, 289 Mich at 205.

The trial court also concluded that dissolution of the partnership was appropriate because "[a] partner wilfully or persistently commit[ted] a breach of the partnership agreement, or otherwise so conduct[ed] himself in matters relating to the partnership business that it [was] not

reasonably practicable to carry on the business in partnership with him," MCL 449.32(1)(d), and "[o]ther circumstances render a dissolution equitable," MCL 449.32(1)(f). As discussed, and contrary to defendants' self-serving assertion on appeal, there was ample evidence to demonstrate that Steven, as well as Jamie, violated the partnership agreement. On this record, we conclude that there was substantial evidence to justify a decree of dissolution. See *Band*, 176 Mich App at 114-115.[1]

III. RECEIVER

Defendants complain that the trial court erroneously appointed a receiver. We review for an abuse of discretion a trial court's decision to appoint a receiver. *Ypsilanti Twp v Kircher*, 281 Mich App 251, 273; 761 NW2d 761 (2008). An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "The primary purpose of a receiver is to preserve property and to dispose of it under the order of the court." *Band*, 176 Mich App at 104. MCL 600.2926 provides in pertinent part: "Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law." "[T]he appointment of a receiver is a remedy of last resort and should not be used when another, less drastic remedy exists." *Kircher*, 281 Mich App at 273.

Here, the trial court appointed a receiver "to carry out the steps necessary for dissolution of the Partnership." The record demonstrates that the parties have been unwilling to communicate or cooperate with respect to the partnership. Steven claimed that he was willing to have discussions regarding the partnership books with Ellen and Fuller; however, he also admitted that he made no effort to communicate with them following the June 7, 2004 partnership meeting. Moreover, Fuller admitted that he would not meet with Steven even though the attorneys offered to set up a meeting. And, as noted above, the record is replete with examples of Steven and Jamie's efforts to exclude plaintiffs from participating in the partnership.

The trial court dissolved the partnership, and it could resolve any difficulties in winding up the partnership's affairs by applying equitable remedies. *Dunlap v Byers*, 110 Mich 109, 115;

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[1] With respect to the trial court's conclusion that dissolution by decree was appropriate when "[o]ther circumstances render a dissolution equitable," MCL 449.32(1)(f), the trial court did not identify any "other circumstances" to warrant dissolution. Although defendants claim such a ruling was "clearly erroneous," defendants have not supported that claim. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims; nor may he give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Defendants' failure to properly address the merits of their assertion of error constitutes abandonment of the issue on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

67 NW 1067 (1896). "[R]eceivership is an equitable proceeding and that the appointing court has basic equitable powers . . . ." *Petition of Briggs*, 51 Mich App 421, 433; 215 NW2d 722 (1974). Here, the trial court fashioned an equitable resolution by appointing a receiver in order to give such relief as justice and good conscience required. *Sinicropi v Mazurek*, 279 Mich App 455, 465; 760 NW2d 520 (2008). Plaintiffs' counsel explained at a motion hearing that "all a receiver would have to do is oversee the broker or the sales person of the property, contact the partners with regard to cutting the lawn and paying for cutting the lawn and plowing the road." Notably, the trial court was well aware of the parties' dissension and acrimony in this case; thus, the appointment of a receiver to facilitate the sale of the partnership's real property would was reasonable in this case. See *Westgate v Westgate*, 294 Mich 88, 91; 292 NW 569 (1940). The trial court crafted an appropriate equitable remedy, which aims to "do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject-matter, to make performance of the orders perfectly safe to those who have to obey it, and to prevent further litigation." *Ladas v Psiharis*, 241 Mich 101, 106; 216 NW 458 (1927). We hold that the appointment of a receiver to wind up the partnership's affairs is reasonable and supported by the record and the trial court, therefore, clearly did not abuse its discretion. *Maldonado*, 476 Mich at 388.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio